

April 2015

## Preventing and Responding to Workplace Bullying & Anti-Harrassment and Bullying Interventions

Fran Sepler

*Sepler & Associates*

Lesley Burke-O'Flynn

*Federation of Post-Secondary Educators*

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### Recommended Citation

Sepler, Fran and Burke-O'Flynn, Lesley (2015) "Preventing and Responding to Workplace Bullying & Anti-Harrassment and Bullying Interventions," *Journal of Collective Bargaining in the Academy*: Vol. 0 , Article 44.

Available at: <http://thekeep.eiu.edu/jcba/vol0/iss10/44>

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# *Preventing And Responding To Workplace Bullying*

**Fran Sepler**  
Sepler & Associates

## *Anti-Harassment and Bullying Interventions*

**Lesley Burke-O'Flynn**



**Prepared for the Conference of the National Center for the Study  
of Collective Bargaining in Higher Education and the Professions  
April 19-21, 2015**

# Session Objectives

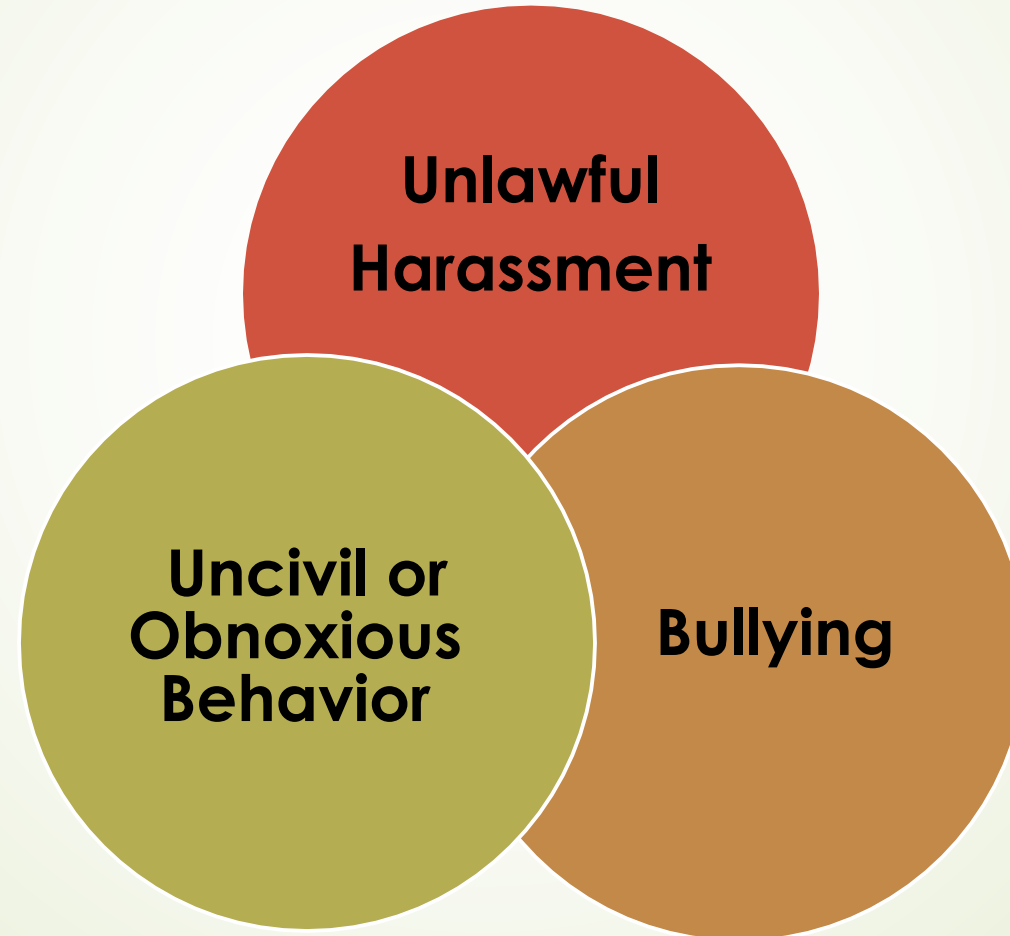
- Provide an overview of bullying and bullying typology,
- Explore bullying analytics
- Examine the challenges of implementing policies in an academic environment,
- Interactively review a case study

# Your Learning Needs?

- Large Institution ?
- Small Institution?
- Have anti bullying policies or initiatives?
- Developing anti bullying policies or initiatives?
- Biggest challenge you face right now?
- Hope to leave with...

# Bullying and Harassment: The Context Today

# The Workplace Triad



# Legal Status of Workplace Bullying

- ▶ Healthy Workplace Bill – in process in 15 states, has been introduced in 32 states. One passage. One veto.
- ▶ Prohibits abusive work environment, defined as malicious, abusive conduct causing tangible harm.

# Reasonableness

- Harris v. Forklift Systems standard intended to overcome strictures of tort remedies, such as intentional infliction of emotional distress



# Why the US has no legal prohibitions

- Opponents of specific legislation argue remedies already exist
  - ❑ Workers Compensation
  - ❑ Common law remedies for negligent or intentional infliction of emotional distress
  - ❑ Assault
  - ❑ Battery
  - ❑ Negligent hiring and supervision
  - ❑ State and federal prohibitions against discrimination and harassment

# Recognition of Abusive Conduct

- Courts have recognized “rude, overbearing, obnoxious, loud, vulgar and generally unpleasant” conduct directed at both male and female employees can be actionable as employment discrimination under Title VII when a particular protected class is disproportionately harmed by the conduct.

EEOC v National Education Association, 422 F. 3d 840 (9th Cir. 2005)

# Analytics in Absence of Law

- Effect on the complainant
- Behavior that Transpired
- Frequency, Intensity, Severity, Targeting, Power Imbalance
- Intention
- History and mutuality

# University of Massachusetts Preliminary Determination Analytics

- Repeated, persistent or severe.
- Targeted
- Involves one or more:
  - Verbal Abuse
  - Physical threats or intimidation
  - Work Sabotage
  - Humiliation/Emotional Abuse
- Has had a demonstrable affect on ability of complainant to perform the essential functions of the job

# University of Massachusetts Preliminary Analytics

- The alleged behavior is not **apparently**
- Legitimate efforts to manage, discipline or correct the respondent's own conduct
- Rigorous advocacy by a designated advocate
- Mutual conflict between peers
- Directed at or perceived to be directed at the complainant due to protected class status
- Outside the context of employment
- The complaint involves people who, by necessity have contact in the workplace.

# Defining Bullying

Repeated , targeted mistreatment of one or more persons (targets) by one or more persons (bullies) that involve one or more of the following elements:

- Verbal abuse
- physical intimidation
- infliction of psychological distress, including humiliation
- Sabotage of Work
- Which interferes with the target's work product or ability to perform their job

# Not Bullying

- ▶ Expressing differences of opinion
- ▶ Making a complaint about a manager's or other employee's conduct, if the complaint is made through appropriate sanctioned methods and in good faith
- ▶ Occasional, one-off incidents which would be considered to be minor (losing your temper, shouting or swearing)
- ▶ Comments that are objective and intended to provide constructive feedback to assist the employee with their work
- ▶ Unskilled managers handling difficult conversations badly
- ▶ Rigid rules consistently applied that are impacting employee engagement
- ▶ Poor communication or disagreements between employees

# Bullying Framework: Typical Targets

## Differences

- Autism Spectrum
- Nonconformance to Stereotypes
- Stature or Attractiveness

## Threat

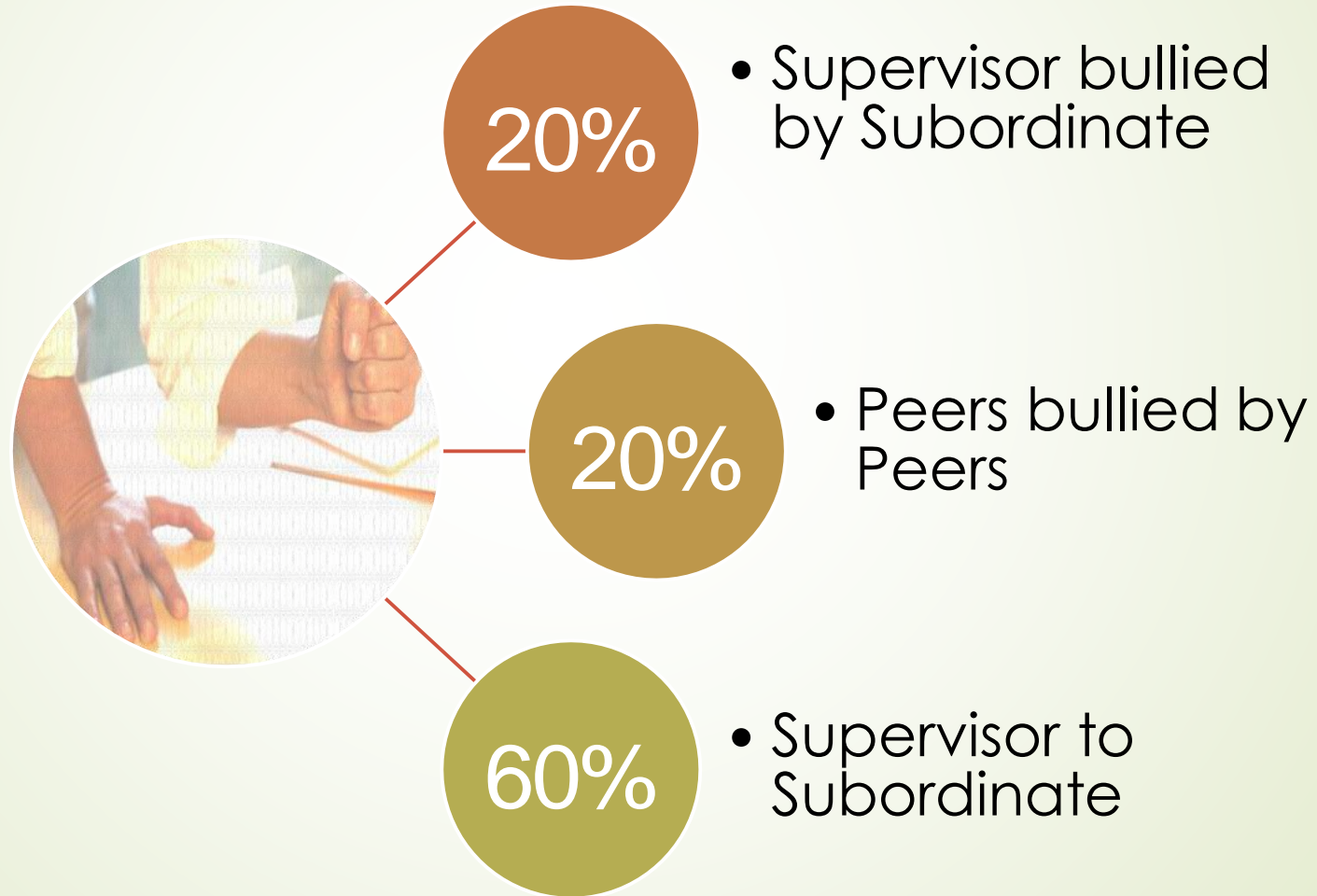
- Too Skilled
- Too Outspoken
- Seen as Competing for Scarce Resources

## Vulnerability

- Underperforming
- Shy or Conflict Averse
- Perceived as Weak



# Bullying Framework: Targets



# Bullying Framework: Targets

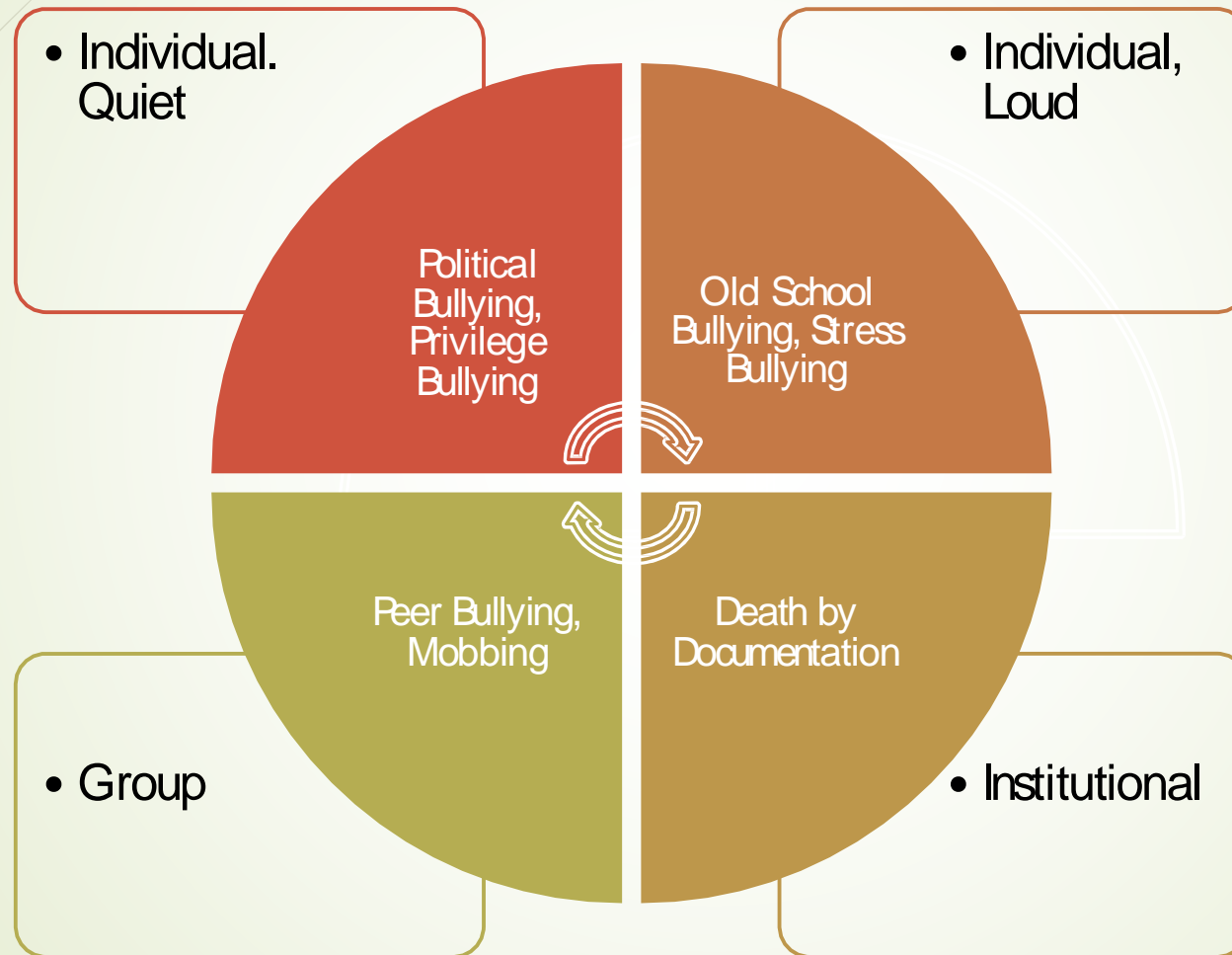
Females

- Bullied by other women in 71% of female directed cases

Males

- Bullied by other males in 54% of male directed cases

# Bullying Typology



# What Does Bullying Look Like?

## Quiet

- ❑ Spread misinformation
- ❑ Share information inappropriately
- ❑ Use nonverbal intimidation
- ❑ make veiled threats
- ❑ Lie about past statements or move the goal line
- ❑ Provide too much or not enough work
- ❑ Withhold resources
- ❑ Faint Praise

## Loud

- ❑ Yell
- ❑ Publicly criticize
- ❑ Find fault constantly
- ❑ Publicly humiliate
- ❑ Physically threaten or intimidate
- ❑ Over supervise
- ❑ Mock and Demean
- ❑ Constant attention to shortcomings

# Mobbing, or Group Bullying

- ▶ We are attracted to being a member of an in group
- ▶ Affiliation with others is powerful
- ▶ Cognitive Dissonance allows justification
- ▶ Feelings of power are pleasing when they promote affiliation.



# “Death By Documentation”

- ▶ Using personnel practices as a tool to intimidate, harass, harangue, shame and motivate employees to quit
- ▶ Differs from legitimate documentation in that it is not preceded by attempts to provide tangible targets for performance improvement and assistance in meeting those targets



# Justifications to be Careful of

# Instability Justification: Look for the death spiral of bullying





# Justifications: Performance Management

- ▶ Alleged bullying is legitimate performance management
  - ❑ Did it have a corrective aspect to it?
  - ❑ Is it consistent with the manner in which others were treated?
  - ❑ Was supervisor acting on advice of others?

# Justifications: Nobody Could Work With the Complainant

- ❑ What steps were taken to get to the bottom of it?
- ❑ What was the specific reason “nobody” could work with complainant?
- ❑ Did alleged bad actor contribute to that perception
- ❑ in any way?

# Justification: Making Everything Up

- ❑ Solicit testimony from former employees
- ❑ Evidence of falsehood?
- ❑ Motive to lie?

# “They need to get the message...”

- ❑ There is **no evidence of any kind** that rudeness, manipulation, humiliation, cruelty, physical intimidation, dismissiveness, condescension or any other form of abusive behavior or language has ONE SINGLE positive outcome associated with it
- ❑ It is only an indication, when it goes unanswered, that the behavior will continue to reap unconstructive or harmful institutional consequences.

# Impact of Workplace Bullying

- ❑ Organizational
- ❑ Fear, lack of trust, anxiety
- ❑ High turnover
- ❑ Reputation damage
- ❑ Lack of creativity and risk taking
- ❑ Labor management strife

# The Psychological Impact: Not Just “Feeling Bad”

- ❑ Clinical Depression
- ❑ Post Traumatic Stress Disorder
- ❑ High Rate of Self Harm or Suicide

# Respectful Workplace Policies=Anti Bullying Policies

- ❑ Require that people behave respectfully
- ❑ Provide problem solving mechanisms to resolve issues early
- ❑ Focus on communication, remediation and only as a last resort, discipline
- ❑ Allow flexibility to deal with unique contextual issues

# Organizational Response to Bullies

- In order to effectively prevent or address bullying, it must be perceived as a “high cost” set of behaviors
  - Tangible Employment Threats
  - Direct and Specific Remediation
  - Measurable Behavior Plans and Accountability



# Accountability

- ▶ Real consequences are essential
  - ❑ Reduction in compensation or bonus
  - ❑ Responsible for fees incurred
  - ❑ Non indemnification
  - ❑ Demotion

# Remediation

- ❑ Competent Coaching
- ❑ Assessment including 360
- ❑ Identification of triggers and behavioral competence coaching.
- ❑ Planning with touch points
- ❑ Continuous feedback
- ❑ Acknowledgement by bully

# Key Aspects of Dealing with a Complaint

- ❑ Listen more than talk: hear the story
- ❑ Do not debate, express doubt or lay blame
- ❑ Affirm feelings
- ❑ THEN get salient facts, witnesses and evidence
- ❑ Stay neutral, and if you can't, get help
- ❑ Use a "reasonable person" standard
- ❑ Acknowledge you may have "missed" something in the course of supervision

# Bystanders and Allies

- Name or acknowledge unfair or unkind treatment
- Interrupt bullying behavior
- Publicly support those affected
- Privately support those affected
- Privately confront those involved
- Use body language to provide feedback in the moment
- Report to someone who can do something about it.

# Bullying is Abuse

- ❑ It's consequences are as grave as those of domestic abuse or assault
- ❑ If we would not stand and watch these things, we owe it to ourselves to find a way to help or support those experiencing it
- ❑ By doing so, we are whistleblowers, protected from reprisal by University policy and State Law.

# The Canadian Context

**Laws, Policies, Collective Agreements and Challenges**

# Laws: Federal

- The Canadian Charter of Rights and Freedoms contained in the Canadian Constitution enshrines the right to associate for all citizens.
- This provides the context in which the right to unionize and to negotiate protections for union members is guaranteed and cannot be undone by provincial governments.
- The Charter also accords every individual equality before and under the law, with the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

# Laws: Provincial

## Human Rights Codes in all Provinces and Territories of Canada

- Considered quasi-constitutional
- Any conflicts between these codes and other enactments, the Human Rights Code prevails
- Purposes closely inform institutional policy and contract language



# 5 Purposes of the BC Human Rights Code (RSBC 1996) Chapter 210

- To foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia
- To promote a climate of understanding and mutual respect where all are equal in dignity and rights
- To prevent discrimination prohibited by this Code
- To identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this code
- To provide a means of redress for those persons who are discriminated against, contrary to this Code

# No discrimination in employment

Because of:

Race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

Therefore:

Harassment and bullying on these grounds is illegal and actionable in British Columbia.



# Legal Expectation of Psychological Security

The expectation of psychological security has been determined by the Supreme Court of Canada to derive from collective agreements which commit to ensuring a harassment/discrimination free workplace and to providing a healthy and safe environment.

# Workers Compensation Act Amended

Workers Compensation Act in British Columbia was amended to entitle a worker to compensation for a mental disorder if the mental disorder.

Either

- i. is a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
- ii. is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and the course of the worker's employment.

# Policies and Collective Agreements

Institutional policies and collective agreement language on anti-discrimination/harassment/bullying are, in turn, **informed by the Human Rights Act purposes and requirements:**

- Promotion of equality
- Prevention of discrimination
- Elimination of patterns of inequality
- Redress

**And by the Workers Compensation Act:**

- Compensation for stress leading to mental disorder from bullying/harassment

# Collective Agreements – Parry Sound

- ▶ *Parry Sound (District) Social Services Administration board v. O.P.S.E.U., Local 324* (2003, 230 D.L.R (4<sup>th</sup>) 257).
- ▶ The Majority of the Supreme Court of Canada held, that “all employment and human rights statutes [are] incorporated into every collective bargaining agreement”.

# Anti-discrimination/harassment policies and collective agreement language

Ideally, a good policy/collective agreement article will:

- Demonstrate a commitment to providing a discrimination/harassment free workplace
- Provide an educational/informational function through:
  - Inclusion of illustrative legal and behavioural definitions of discrimination/harassment.
  - Illustrating what the unacceptable standards of behaviour are.
  - Provision of awareness and prevention programs



# Anti-discrimination/harassment policies and collective agreement language

- Clearly explain all aspects and stages of complaint procedures
  - Informal attempt at resolution where possible
  - Formal complaint
  - Mediation attempt at resolution where possible
  - Third party investigation and findings
  - Redress implemented
  
- Clearly outline accountabilities of participants

# A policy/collective agreement article is useless if people don't know about it or won't use it

- The policy/collective agreement provisions should be visible and accessible to all employees.

## A procedure should:

- ▶ provide the framework in which individuals can come forward with their complaints
- ▶ ensure that everyone understands their rights and responsibilities:
  - i. Executive and management
  - ii. Departmental chairs
  - iii. Association/union representatives
  - iv. Faculty members
- ▶ provide the elements due process and natural justice for all concerned

# Due Process/Natural Justice

Unions in Canada have the Duty of Fair Representation to their members. This means unions/associations, in the disposition of cases, must:

- Represent all members, complainants and respondents, in a non-discriminatory, non-arbitrary, bone fide manner
- Negotiate collective agreement provisions that provide a balanced and fair process for both complainants and respondents
- Allow for the respondent to know what the case against them is and the opportunity to answer in their defence

# Organizational Cultures

Two types of organizational cultures are fertile territory for bullying and harassment:

- Over-authoritarian
- Over-laissez-faire

Post-secondary institutions usually fall into the latter category.

# Systemic Challenges

- Deficiencies in work processes: lack of transparency in evaluation, appointment and promotion processes, uneven workload distribution/course loading
- Scarce resources and shrinking job opportunities: who gets what grant money, which offices,
- Shrinking job security: who gets tenure track/tenured positions
- Deficiencies in leadership: lack of understanding of how to handle harassment and bullying when they arise in the organization, both laterally and horizontally

# Human responses

Conflicts occur and conflicts escalate, depending on how high the stakes are and which personalities are in play.

Several phases of escalation are common:

1. Conflict is issue oriented and parties want reasonable resolution, are cooperative and rational
2. The original issue vanishes and an increasingly difficult relationship becomes the heart of the problem
3. Conflict becomes more destructive until getting rid of the opponent becomes the sole aim.

# The complaint

Somewhere on this conflict continuum, a complaint is filed, and the degree of difficulty in resolving the situation depends partly on where on the continuum it resides.



# Challenges for the Complainant

1. Complainants are sometimes not believed or are believed to be exaggerating, because people may think:
  - The situation is not that bad
  - The complainant is just a whiner or is a disgruntled employee
  - The complainant has a problem with authority
  - It's their own fault
  - It's just a personality clash

# Challenges for the Complainant

2. Normally at work we are expected to be calm and rational rather than agitated or emotional.

This does not create an atmosphere where telling a story of being the target of a harasser or bully is easy – to the contrary, it discourages people from talking about it.

# Challenges for the Complainant


3. Telling a story of being harassed or bullied is risky:
  - Being a victim carries with it a certain judgement from others
  - Often status and worth depends on positive attention, not negative attention
  - Opens a person to potentially embarrassing questioning

# Telling the story of being harassed or bullied is difficult

At work, the telling of the story occurs within limited windows of opportunity:

- At a meeting with human resources or a dean
- At a third party investigatory meeting
- At a grievance meeting
- In a hearing

The telling of what may be intensely personal or sensitive information in these formal settings presents unique challenges.



# **Despite these challenges, the teller of the story must be heard as competent and credible**

It is critical for the teller of the story to understand that the way they talk to their therapist about bullying/harassment, in order to heal, is different than the way they need to talk to the organization, the object of which is to change the situation.

# Eight points to establishing credibility for a complainant

- 1. Be rational:** Rationality is considered to be an important feature of credibility in organizational settings. Key to this is telling a linear story.
- 2. Express emotions appropriately:** calmly, evenly, use of metaphor helps.
- 3. Provide consistent details:** relevant detail is seen as authentic, retelling the same details is seen as truthful. Forgetting or adding to details can be seen as unreliable.
- 4. Offer a plausible story:** don't dwell on outrageous events that others may question, even if they are true.

# Eight points to establishing credibility for a complainant

5. **Be relevant:** exclude extraneous details, include the scope of offending behaviours, witnesses, times, dates, venues
6. **Emphasize your own competence:** focus on the offending behaviour rather than on feelings about the behaviour, actions taken so far. Talk about successes.
7. **Show consideration for others perspectives:** display understanding and empathy for others, concern about the organization
8. **Be specific:** use concrete, specific language to make explanations clear and easily understood, ask if the listener needs clarification

# The degree of responsiveness by the organization itself or by others communicates tolerance or intolerance for harassment or bullying

Studies show that bullies will only act as bullies when they can get away with it, if the societal and personal values and organizational culture permit it.

The interventions required to prevent harassment and bullying in the workplace and to create safe, healthy workplaces requires a multifaceted, multi-level approach.





## **SOCIETAL INTERVENTIONS**

Federal, Provincial, Labour, Health and Safety Laws and Statutes

## **ORGANIZATIONAL INTERVENTIONS**

Collective agreement language, policies, procedures, training, supportive culture

## **PERSONAL INTERVENTIONS**

Modelling appropriate behaviours, social support, don't be a bystander

\* This presentation is adapted from materials compiled from the following sources:

1. FPSE educational resources
2. *Bullying and Harassment in the Workplace: Developments in Theory and Practice, 2<sup>nd</sup>. Ed.*, edited by Stole Einarsen, Helge Hoel, Dieter Zapf, Cary L Cooper, 2011
3. *How to Bust the Office Bully – Eight Tactics for Explaining workplace Abuse to Decision Makers*, by Dr. Sarah J. Tracy, Dr. Jess K Alberts, Kendra Dian Rivera, 2007
4. *Bully in Sight*, by Time Field (Wessex Press) 1996
5. *Fifteen Signs of Workplace Bullying*, Kathline Holms, CHRP, 2010

# Case Study Questions

- How could this situation have been prevented?
- Where could agreements between labor and management have mitigated the severity of this matter?
- How can this be resolved?



# Our Top Ten Tips

# Contact The Presenters:

Fran Sepler: [fransepler@sepler.com](mailto:fransepler@sepler.com)

Lesley Burke O'Flynn: [lburke@fpse.ca](mailto:lburke@fpse.ca)